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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File:



Office: SAN FRANCISCO, CA

Date:

JUN 18 2001

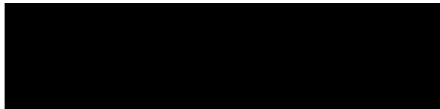
IN RE: Applicant:



Application:

Application for Waiver of Grounds of Inadmissibility under
Section 212(i) of the Immigration and Nationality Act, 8
U.S.C. 1182(i)

IN BEHALF OF APPLICANT:



Public Copy

identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.

INSTRUCTIONS:

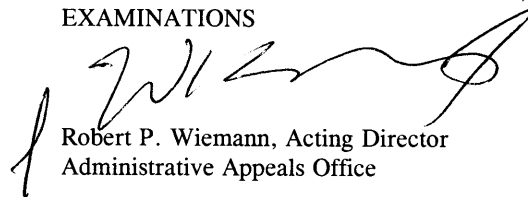
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in 1991. The applicant married a United States citizen in 1997 and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to remain in the United States and reside with his spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel states that the district director's denial of the applicant's waiver request will result in the permanent forced separation of a husband from his wife and children. Counsel asserts that the decision is unduly harsh and is inconsistent with case law citing separation of family members as the single most important factor in evaluating whether the "extreme hardship" requirement has been met.

The record reflects that the applicant, in applying for and obtaining a nonimmigrant visa for the United States, presented a Philippine passport in an assumed name. He then used that document to procure admission into the United States on July 19, 1991. The applicant remained longer than authorized and applied for asylum in the United States on March 6, 1992. On his asylum application, the applicant falsely stated that he had entered the United States without inspection. The applicant was scheduled to appear for an interview in connection with his asylum claim but withdrew his application on November 22, 1995.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) MISREPRESENTATION.-

(i) IN GENERAL.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered.

21 I&N Dec. 296 (BIA 1996).

On appeal, counsel has cited case law relating to the issue of "extreme hardship" as that term applied in matters involving suspension of deportation under § 244 of the Act, 8 U.S.C. 1254, prior to its amendment by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), recodification under § 240A of the Act, 8 U.S.C. 1230A, and redesignation as "cancellation of removal." 21 I&N Dec. 627 (BIA 1996); 16 I&N Dec. 596 (BIA 1978).

In 16 I&N Dec. 581 (BIA 1978), the Board stated that, for the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion.

21 I&N Dec. 296 (BIA 1996). In those matters, the alien was

seeking relief from removal. In the matter at hand, the alien is seeking relief from inadmissibility. It is more suitable to use case law references relating to the application of the term "extreme hardship" as found in case law relating to waivers of grounds inadmissibility under § 212(h) of the Act than in case law relating to cancellation of removal.

Although the former application for suspension of deportation and the present and past applications for waiver of grounds of inadmissibility require a showing of "extreme hardship," the parameters for applying such hardship are somewhat narrower in § 212(h) proceedings. In such proceedings, the applicant may only show that such hardship would be imposed on a spouse, parent, or child who is a citizen or lawful permanent resident of the United States. In former suspension of deportation proceedings, the alien could show hardship to himself or herself as well as the condition of his or her health, age, length of residence beyond the minimum requirement of seven years, family ties abroad, country conditions, etc. In the present amended cancellation of removal proceedings, hardship to a nonpermanent resident alien is no longer a consideration, the alien must have been physically present for a continuous period of not less than 10 years, and the hardship to the spouse, parent, or child must be exceptional and extremely unusual. In § 212(i) proceedings, hardship to an applicant's children is not a consideration.

In [REDACTED], Interim Decision 3380 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act include, but are not limited to, the following: the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel states that the applicant's spouse does not believe that she and the children would be able to travel to the Philippines if the applicant were required to depart the United States. Counsel states that the applicant's spouse has never travelled outside of the United States, is not of Filipino ancestry, does not speak Tagalog, and has no friends or family in the Philippines. The spouse fears that due to her race and inability to speak Tagalog, she would likely be a victim of crime and sexual discrimination in the Philippines. The applicant's spouse also fears that she would be unable to adequately support the daily needs and medical requirements of herself and her

children in that country.

There are no laws that require the applicant's spouse and/or children, to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. See [REDACTED] 927 F.2d 465 (9th Cir. 1991). The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. See [REDACTED], 39 F.3d 1049 (9th Cir. 1994). In [REDACTED] 37 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

Counsel states that in addition to the emotional loss which the applicant's spouse would suffer as a result of her husband's removal from the United States, she would probably have to file for bankruptcy to discharge her and her husband's debts, would have to resort to public assistance to adequately care for their two small children, and would be financially destitute as a result of her husband's banishment from the United States.

This assertion of financial hardship to the applicant's spouse advanced by counsel is contradicted by the fact that, pursuant to § 213A of the Act, 8 U.S.C. 1183a, and the regulations at 8 C.F.R. 213a, the person who files an application for an immigrant visa or for adjustment of status on or after December 19, 1997 must execute a Form I-864 (Affidavit of Support) which is legally enforceable in behalf of a beneficiary (the applicant) who is an immediate relative or a family-sponsored immigrant when an applicant applies for an immigrant visa. The statute and the regulations do not provide for an alien beneficiary to execute an affidavit of support in behalf of a U.S. citizen or resident alien petitioner. Therefore, a claim that an alien beneficiary is needed for the purpose of supporting a citizen or resident alien petitioner can only be considered as a hardship in rare instances.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that the qualifying relative would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Hardship to the applicant himself or his children is not a consideration in § 212(i) proceedings. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving

eligibility remains entirely with the applicant. [REDACTED]
[REDACTED] I&N Dec. 582 (BIA 1957). Here, the applicant has not met that
burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.